11.1.2006 Present: Mr. Sandeep Kaushik and Mr. Pankaj Sharma, Advocates, for the petitioner.

Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Dy. Advocate General for respondents No.1 and 2.

Mr. D.K. Khanna, Advocate, for respondent No.3.

Mr. Rajiv Sharma, Senior Advocate with Mr. Surinder Sharma, Advocate for respondents No.4 to 8.

Mr. Ajay Mohan Goel, Advocate, for respondents No.9 and 10.

This writ petition is directed against order dated June 9, 2005, whereby the Assistant Professors working in Dr. RPGMC, Kangra at Tanda and I.G.M.C., Shimla appointed on contractual basis, have been ordered to be regularized with immediate effect in Medical Education Department in the pay scale of Rs.16350-20100 plus NPA and other allowances as admissible under the rules.

The appointments came to be challenged on the ground that the same are in violation of the recruitment rules and the guidelines. The petitioner has prayed that the respondents be directed to fill up the posts of Assistant Professors as per the recruitment rules through Himachal Pradesh Public Service Commission.

Notice of this petition was issued to the respondents. Subsequently, applications were filed by some Assistant Professors, who were going to be affected by the decision of this writ petition and vide order dated January 4, 2006, they were ordered to be impleaded as party respondents in this writ petition.

On the last date of hearing, learned counsel for the petitioner brought to our notice that though vide order dated November 29, 2005, operation of Annexure P-1 was stayed, yet the persons mentioned therein are still continuing in service despite the period of their contractual appointment having come to an end. Considering this to be a serious matter, the secretary (Health) to the Government of Himachal Pradesh was directed to be present in Court to explain as to why the order dated November 29, 2005 has not been complied with. It was also directed that a specific affidavit be filed by respondent No.2 as to the period of contractual appointments and, order if any, passed in this behalf. The case was adjourned for today.

Secretary (Health) to the Government of H.P. is present in Court. Learned Advocate General has placed on record Notification dated January 10, 2006, whereby in exercise of the powers conferred by proviso to Article 309 of the Constitution of India, amendment has been made in the Himachal Pradesh Medical Education Service Rules, 1999. Columns 10 and 11 to Annexure-1 have been amended. The amendment reads as under:-

Short title and Commencement	**1**	**(i) These rules may be called the Himachal Pradesh Medical Education service (2nd Amendment) Rules, 2006.** **(ii) These rules shall come into force from the date of its publication in the Rajpatra, Himachal Pradesh**

Amendment of Anneuxre-1	**2**	**In the existing provisions under Serial No.3 of Annexure-1, to the category pertaining to Assistant professor:-** **(a) for the existing provisions against Column No.10, the following shall be substituted, namely:-** **"(i) 50% by promotion failing which by direct recruitment or on contract basis.** **(ii) 50% by direct recruitment or on contract basis in the manner specified in Appendix-B."** **(b) for the existing provisions against Column No.11, the following shall be substituted, namely:-** **"By promotion from amongst the Lecturers who possess three years' regular service or regular combined with continuous adhoc service, if any, in the grade in the concerned speciality failing which by appointment (by selection) from amongst members of the H.P. Civil Medical Service (General Wing) having recognized post graduation degree or its equivalent qualification in the concerned speciality and possess at least three years teaching experience as Lecturer/ Registrar/Demonstrator/Tutor/Senior Resident/Chief Resident in the concerned speciality after doing post graduation in the concerned speciality, failing which by direct recruitment or on contract basis."** **and** **(c) after the existing provisions of Column No.11, the following new Column No.11-A shall be inserted, namely:-**
"11-A. Selection for appointment to the post by contract appointment		**<u>(i) Concept:</u>** **(a) The Assistant Professor in the Government Medical Colleges will be engaged on contract basis for a period of one year and extendable on year to year basis.** **(b) The candidate will be selected by advertising the vacant post by the Director Medical Education in leading news papers after approval of the Government.** **(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules/ Medical Council of India Regulations/Guidelines.** **(d) The candidates so selected under these rules will not have any right to claim for regularization or permanent absorption in the Government job.**

(ii) Honorarium: the candidates appointed on contract basis will be paid following fixed amount per month:-
Medical: 29000/- PM. Non-medical 23000/- PM.

The above contractual salary can be increased/decreased by the Government from time to time

(iii) Selection Process and Appointing/ Disciplinary Authority:

The Director Medical Education, Himachal Pradesh after obtaining the approval/permission of the Government will advertise the vacant posts for appointment on contract basis in the leading news papers and invite the applications of the eligible candidates having qualifications and other eligibility conditions as prescribed in these Rules/Guidelines prescribed for this category. After conducting the interview, the Director Medical Education will furnish all the records alongwith recommendations to the Government for issuing appointment orders (Notification) at Government level. The Secretary (Health) will be the appointing and disciplinary authority.

(iv) Committee for Selection of contractual candidates:

The selection will be made by the Government after the approval/ recommendations of selection Committee constituted as under:-

> **"As may be constituted by the competent authority from time to time."**

Note.1: Preference will be given to the candidates who have worked in the same post/category on contract/adhoc basis earlier.

Note.2: The selection will be made on the basis of viva-voce.
(V) Agreement: After selection of a candidate, he/she shall sign an agreement as per Appendix-D appended to these Rules.
(v) Terms and Conditions:
(a) The service of the candidates on contract will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.
(b) The candidates appointed on contract basis will be paid the salary as mentioned in (ii) Honorarium column above or fixed by the Government from time to time.

(c) The contractual candidates will not be allowed the facility of vacation leave as admissible in vacation department in Medical Colleges. He/she shall not be entitled for Medical Reimbursement and LTC etc. Only Maternity leave will be given as per Rules. On day Casual Leave will be admissible after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible.

(d) Selected candidate will have to submit a certificate of his/her fitness from a Government Hospital. The women candidates pregnant beyond twelve weeks will be rendered temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer.

(e) Transfer of contractual candidates appointed on contract basis will not be ordinarily permitted from one college to another college.

(f) The contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular Assistant Professor.

(g) Unauthorized absence from the duties without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for salary for the period of absence from duty.

(vii) <u>Right to claim regular appointment:-</u>

The candidate engaged on contract basis under these rules shall have no right to claim for regularization/permanent absorption in the department at any stage."

On going through the aforementioned amendment we find that the Constitution of Selection Committee has been left to the discretion of the competent authority to be constituted from time to time. It has not been specified as to who would be the members of the Selection Committee. Learned Advocate General on

instructions from the Secretary (Health) states that the Selection Committee would be comprised of the following:-

(i) Director, Medical Education;

(ii) Principal of the concerned Medical College;

(iii) Head of the department of the concerned speciality;

(iv) One expert from outside the State of the concerned speciality.

In regard to 'preference' mentioned in Note-1, given in clause (iv) wherein it is mentioned that preference will be given to the candidates who have worked in the same post/category on contract/adhoc basis earlier, it has been clarified by the learned Advocate General that 'preference' means that if two candidates are found to be equal in all respects on merits, then preference will be given to the candidate who has worked in the same post/category on contract/adhoc basis earlier.

In view of the amendment made in the recruitment rules referred to above and the statement made by the learned Advocate General, impugned Annexure P-1 is quashed. Consequently, the respondents are directed to fill-up the vacant posts either by way of direct recruitment or on contract basis by advertising vacant posts within a period of two months from today and complete the selection process within a month thereafter. Till such time the selection is complete and appointments made, the present respondents i .e the Assistant Professors, whose services were sought to be regularized vide order dated June 9,

2005, would be allowed to continue. In case they are eligible in all respects, they shall also be at liberty to apply for the selection.

In view of the above, writ petition stands disposed of. Pending application(s), if any, shall also stand disposed of.

Copy of order Dasti.

(V. K. Jhanji)
Judge

January 11, 2006 **(Surjit Singh)**
(ss) **Judge**